

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**BOARD OF EDUCATION OF THE
PECOS INDEPENDENT SCHOOLS**

Plaintiff,

v.

**CHRISTINE and LEROY PADILLA,
on behalf of R.Q., a minor,**

Defendants.

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Case No. 10-cv-00199-RB-LFG

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendants' Motion Requesting Opportunity to Respond to Plaintiff's Answer (Doc. 17) in which Defendants request that the Court authorize the submission of a Reply to Plaintiff's Answer to Defendants' Counterclaim. Having reviewed the parties' memoranda and otherwise being fully informed, the Court denies Defendants' motion as moot, as the only issue Defendants seek to address is the timeliness of their Counterclaim, and this issue has already been addressed by the Court.

RQ is a minor residing in San Miguel County, New Mexico in the Pecos Independent School District. RQ has significant hearing loss and therefore qualifies for free appropriate public education under the Individuals with Disabilities Education Act (IDEA). From 2004 through November 2008, RQ attended the Presbyterian Ear Institute, a private school in Albuquerque, New Mexico. During this time, the Pecos School Board agreed to pay RQ's transportation expenses. In November 2008, however, the Pecos School Board indicated that it would stop paying RQ's transportation.

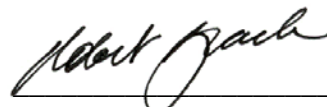
The Padillas, RQ's guardians, filed a due process hearing complaint in December 2008. This first complaint was settled through mediation, however, a second due process hearing complaint was filed in October 2009. A Decision of the Due Process Hearing Officer (Doc. 12-1) was entered on

February 4, 2010. On March 5, 2010, the Pecos School Board (Plaintiff) filed a Complaint (Doc. 1) seeking a review of a the Decision of the Due Process Hearing Officer. On April 12, 2010, the Padillas (Defendants) filed an Answer and a Counterclaim (Docs. 11 & 12) also seeking review of the Decision of the Due Process Hearing Officer. Plaintiff filed an Answer to Defendants' Counterclaim, wherein the Pecos School Board asserted that Defendants' Counterclaim was untimely. (Doc. 14 at 2.) Defendants then filed their Motion Requesting Opportunity to Respond to Plaintiff's Answer on May 19, 2010, seeking to respond only to the issue that the Counterclaim was not timely. (Doc. 17 at 2.)

On May 19, 2010, Plaintiff also filed a Motion to Dismiss Plaintiff's Counterclaim, arguing that Defendants' Counterclaim must be dismissed because it was filed more than thirty days after the parties received the Decision of the Due Process Hearing Officer, thus violating the statute of limitations for filing a civil action for review of the Decision. (Doc. 15.) Both parties had an opportunity to brief this issue, and on November 2, 2010, the Court filed a Memorandum Opinion and Order, concluding that the counterclaim was not untimely and denying Plaintiff's Motion to Dismiss. (Doc. 49.) As Defendants had the opportunity to present their arguments through their Response to Plaintiff's Motion to Dismiss Counterclaim (Doc. 22), and the Court has already ruled on this issue, a Reply to Plaintiff's Answer to Defendants' Counterclaim is unnecessary.

WHEREFORE,

Defendants' Motion Requesting an Opportunity to Respond to Plaintiff's Answer (Doc. 17) is hereby **DENIED** as moot.



ROBERT BRACK
UNITED STATES DISTRICT JUDGE